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Report of the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Mission to Sri Lanka*

Summary

The Special Rapporteur on the human rights of migrants conducted an official visit to Sri Lanka from 19 to 26 May 2014, where he visited Colombo, Kurunegala, Kandy, Tangalle and Galle, and held consultations with government officials, the United Nations country team, the Human Rights Commission of Sri Lanka, diplomats, recruitment agents, trade union representatives, civil society organizations and migrants.

The focus of the visit was labour migration from Sri Lanka and related recruitment practices, and their impact on the human rights of migrants. The Special Rapporteur welcomes the efforts undertaken by the Sri Lankan authorities to regulate labour migration and protect the rights of its citizens who migratee abroad, but notes the need to fully implement a human rights approach in that respect.

The Special Rapporteur also looked into the situation of migrants in Sri Lanka. He notes the need to regulate and monitor the detention of migrants in Sri Lanka, and to revise constitutional provisions which discriminate against migrants.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[*English only*]

Report of the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to Sri Lanka (19–26 May 2014)

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I. Introduction

1. The Special Rapporteur on the human rights of migrants, François Crépeau, conducted an official visit to Sri Lanka from 19 to 26 May 2014 at the invitation of the Government. The main focus of the visit was on labour migration from Sri Lanka and recruitment practices, but the Special Rapporteur also looked into the situation of migrants in Sri Lanka, particularly those in detention.

2. During the mission, the Special Rapporteur met government representatives including representatives of the Ministry of Foreign Employment Promotion and Welfare, the Ministry of Labour and Labour Relations, the Ministry of External Affairs, the Ministry of Justice, Department of Immigration and Emigration, and the Sri Lanka Bureau of Foreign Employment (SLBFE); members of the United Nations country team, the Human Rights Commission of Sri Lanka, the diplomatic community, civil society organizations and recruitment agencies; and trade union representatives, academics, families of migrants and returned migrants. He also visited Mirihana detention centre, Boossa prison, the Sahana Piyasa welfare centre in Katunayake, SLBFE provincial centres and training centres in Kurunegala and Kandy, and the migrant resource centre in Tangalle.

3. Owing to the Special Rapporteur's focus on recruitment, at his initiative, the Ministry of Foreign Employment Promotion and Welfare organized a workshop during the visit to discuss recruitment practices. The workshop was attended by, inter alia, representatives of the Government, recruitment agencies, the United Nations country team and civil society. Issues discussed included the idea of a "clearing house" for destination countries, a multi-State and stakeholder approach to be promoted through bilateral and multilateral agreements, an awareness-raising programme for all relevant stakeholders and the need for global insurance coverage for all migrant workers.

4. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the Government prior to, throughout and after the visit. He also thanks the United Nations country team for their valuable support and assistance.

II. General background: migration in Sri Lanka

5. The Middle East has been the main market for Sri Lankan labour migration since the late 1970s. The main destination States include Jordan, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates. The level of migration from Sri Lanka is increasing and is playing a key role in the economic development of the country. Remittances form 33 per cent of the foreign exchange in Sri Lanka, the 1.8 million foreign workers form 24 per cent of the labour force and remittances form 8.3 per cent of gross domestic product. In 2010, almost 60 per cent of remittances came from the Middle East, 18 per cent from the European Union and 6 per cent from the Far East. Remittance inflows have increased steadily over the past 30 years. Around 6.5 per cent of households in Sri Lanka receive remittances from overseas. Migrant households have higher spending on household expenditure such as food, education, health care and housing.[1]

6. More than 293,000 Sri Lankans migrated for work in 2013. Remittances have become the key source of foreign exchange earnings in Sri Lanka, as well as a source of economic dependency for nearly one third of the population. Over the years, a large

[1] SLBFE statistical report

recruitment industry has developed in Sri Lanka and labour migration has had an impact on economic activities such as recruitment, airline services, banking and insurance.[2]

7. There is a large mismatch between the international demand for jobs and the supply capabilities of Sri Lanka, as demand is mainly for skilled labour, while Sri Lankan migration is concentrated on housemaids and low-skilled workers, thus creating problems relating to their protection and low remuneration. The Government of Sri Lanka has placed particular emphasis on increasing the migration of skilled workers, including through better vocational training. Low-skilled workers are more likely to face human rights violations, including harassment and abuse in the workplace.

8. Root causes of migration from Sri Lanka include unemployment or underemployment, especially for women, youth and minorities. Migration has acted as a safety valve for unemployment in the country. Sri Lanka has made significant investments in health and education and social development policies, but a large number of Sri Lankans still see migration as the best solution for their own circumstances.

9. The female unemployment rate in Sri Lanka is almost double that of the male unemployment rate,[3] forcing many women to migrate to find work. The majority of migrant women belong to disadvantaged communities where traditional livelihoods are not viable, so they migrate owing to lack of access to regular and substantial income and the inability to bear the rising cost of living. While the main reason to migrate is economic hardship, other frequent reasons include ambitions to build a house, or to educate their children. Other push factors include debt, domestic violence and alcoholic husbands. Women have dominated the foreign employment market for Sri Lankans, mainly owing to high demand for domestic workers in the Middle East. However, recent statistics show that this has changed and over 50 per cent of Sri Lankan migrants are now men.[4]

10. During the period of conflict in Sri Lanka, a considerable number of Tamils migrated from the country. Lack of economic opportunities and livelihood continues to be a determining factor which pushes Tamils and other minorities to seek opportunities outside Sri Lanka.

11. The Government offers services for Sri Lankan migrants, such as insurance andpension schemes, and education scholarships for their children. However, the large number of migrants has great social consequences for the families left behind. Lack of reliable, accessible information about migration also frequently leads to abuse and exploitation.

III. Normative and institutional framework for the protection of the human rights of migrants

A. International legal framework

12. Sri Lanka is a party to all the core human rights treaties except the Convention on the Rights of Persons with Disabilities and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance; the Second

[2] International Labour Organization, *Recruitment Practices of Employment Agencies Recruiting Migrant Workers* (2013).

[3] Ministry of Foreign Employment Promotion and Welfare, *Migration Profile: Sri Lanka* (2013) and *National Labour Migration Policy for Sri Lanka* (2008).

[4] Available from www.slbfe.lk/downloads/statis/2.pdf.

Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

13. Sri Lanka has ratified all eight International Labour Organization (ILO) fundamental conventions. However, it has not ratified ILO Conventions No. 97 concerning Migration for Employment (Revised 1949), No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, No. 181 (1997) concerning Private Employment Agencies, or No. 189 (2011) concerning decent work for domestic workers.

14. Sri Lanka has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, or the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime. Neither has it ratified the Convention relating to the Status of Refugees and its 1967 Protocol, or the Convention on the Reduction of Statelessness.

B. Regional consultative processes

15. In 2014–2015, Sri Lanka is chairing the Colombo Process, which comprises Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Viet Nam. The Colombo Process is a regional consultative process on the management of overseas employment and contractual labour for countries of origin in Asia. Sri Lanka is also a member of the Abu Dhabi Dialogue, which comprises all the Colombo Process members and Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia, Singapore, the United Arab Emirates and Yemen.

16. As Chair of the Colombo Process, Sri Lanka is working towards establishing more links with destination States and the Abu Dhabi Dialogue, and is focusing its chairmanship on, inter alia, ethical recruitment and the reduction of recruitment fees. Sri Lanka has made efforts for countries of origin to agree on a common standardized work contract, and will use it to negotiate with destination States that are members of the Abu Dhabi Dialogue. The Special Rapporteur welcomes the initiative and notes the potential to enhance cooperation with other Asian countries of origin for a common platform on labour migration — including a standard contract, agreed labour conditions, social protection, insurance provisions, etc. — which could serve as a basis for negotiations with countries of destination , including those in the Abu Dhabi Dialogue.

C. National legal and institutional framework

1. National laws

17. The Constitution of Sri Lanka was adopted in 1978. Chapter III is dedicated to fundamental rights. According to article 12 (1), all persons are equal before the law and are entitled to the equal protection of the law. Article 12 (2) provides that no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds; and article 12 (3) provides that no person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.

18. The Sri Lanka Bureau of Foreign Employment Act 21 of 1985 (amended in 1994 and 2009) is the primary piece of legislation that applies to Sri Lankan workers migrating for overseas employment. Its objectives, as set out in section 15, include promoting and developing employment opportunities for Sri Lankans outside Sri Lanka; assisting and supporting foreign employment agencies in their growth and development; regulating the business of foreign employment agencies which recruit Sri Lankans for employment outside Sri Lanka; issuing licences to foreign employment agencies; setting standards for and negotiating employment contracts; entering into agreements with foreign authorities, employers and employment agencies; formulating and implementing a model employment contract which ensures fair wages and employment standards; undertaking the welfare and protection of Sri Lankans employed abroad; training and orientation of Sri Lankans going abroad for work; and providing assistance to Sri Lankans going abroad for employment. The act does not cover migration to Sri Lanka and it does not have a strong human rights basis. The Special Rapporteur regrets the lack of a comprehensive law to protect the rights of migrants.

19. The Ministry of Foreign Employment Promotion and Welfare has prepared a new piece of legislation entitled "Sri Lanka Employment Migration Authority Act" to set up an authority on migration to replace SLBFE, which would provide a more overarching role for the Ministry in various components of the industry, including with regard to migration to Sri Lanka. The Act provides for the establishment of a national advisory council on employment migration, a Sri Lanka employment authority, a Sri Lanka employment migrants foundation (Rata Viruwo), an overseas Sri Lankan foundation, and a national chamber of licensed foreign employment agencies. It also provides for the establishment of a workers' welfare fund and a foreign employment promotion fund.

20. Part VIII of the draft Act, "Regulation of outward migration", sets strict regulations for migration from Sri Lanka. Its article 73 (1) provides that all Sri Lankans leaving for work outside Sri Lanka shall register with the Authority, pay a fee and obtain departure approval by the Authority. Article 73 (4) provides that no Sri Lankan shall leave for work outside Sri Lanka unless such person is in possession of a valid Certificate of Departure Registration issued by the Authority and a passport duly stamped by the Authority. The Special Rapporteur notes that according to article 12 of the International Covenant on Civil and Political Rights, ratified by Sri Lanka, everyone shall be free to leave any country, including his own. The draft Act also provides, in article 73 (7), that no person shall change employer during a contract period unless for a compelling valid reason, and any person who contravenes that provision shall be guilty of an offence punishable under the Act. Article 74 provides that every Sri Lankan, of a category prescribed by the Authority, who leaves Sri Lanka for work shall inform the Divisional Secretary regarding every child below 6 years that the said person will leave behind in Sri Lanka, and they must register a guardian for such child before being permitted to leave Sri Lanka. Persons who fail to provide correct information on their children, as required, shall be guilty of an offence punishable under the Act. Furthermore, article 79 (1) provides that Sri Lankans who overstay in the destination country shall be guilty of an offence. The Special Rapporteur would like to stress the fact that migrants often change employers due to abuse or non-payment of salaries, and overstay because their employers do not pay their return ticket, or because their passport is confiscated or they do not obtain the required exit permit. Those provisions are therefore very worrying. At the time of the visit, the new Act was being reviewed and was expected to come into force before the end of 2014. The Special Rapporteur urges the Sri Lankan authorities to revise the draft Act to ensure a human rights-based approach to migration.

21. The Penal Code (Amendment) Act No. 16 of 2006 strengthened the provisions on trafficking, in order to bring the definition into line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the

United Nations Convention against Transnational Organized Crime (the Palermo Protocol) and criminalize debt bondage, forced or compulsory labour and slavery.

22. The Immigrants and Emigrants Act, 1949 regulated the detention and deportation of non-citizens, as well as the departure of persons from Sri Lanka.

2. National institutions and policies

23. The Ministry of Foreign Employment Promotion and Welfare, set up in 2007, is the lead ministry responsible for labour migration. The creation of the Ministry is stated to be an indication of the priority given to labour migration in Sri Lanka. The Ministry is responsible for policy formulation, planning, monitoring and financing the setting up of a sound mechanism for promoting foreign employment.

24. SLBFE., established in 1985, within the purview of the Ministry of Foreign Employment Promotion and Welfare (before 2007 the Ministry of Labour), is a public corporation tasked with regulating the foreign employment industry in Sri Lanka and enforcing the provisions of the Sri Lanka Foreign Employment Bureau Act. The Special Rapporteur has received reports that the Bureau's main functions, namely regulation, employment promotion and worker welfare, are not delineated properly. Additionally, although it is supposed to regulate them, recruitment agents are overly represented on the Bureau's Board of Management, which contains no migrant worker representation. The Special Rapporteur hopes the new Employment Migration Authority Act will ensure proper delineation of the new Authority's functions, with balanced representation on the Board, including for migrant workers. The draft Act provides that the Board will have 11 members, all appointed by the Minister.

25. The Sri Lanka Foreign Employment Agency was established in 1996. It is a subsidiary of SLBFE, and is a government-owned licensed recruitment agency, headed by a chairman appointed by the SLBFE Board of Management. It functions in association with local and foreign employment agencies to secure employment opportunities for Sri Lankan youth, with full State intervention.

26. The Department of Immigration and Emigration, under the Ministry of Defence, facilitates Sri Lankan workers' going abroad by issuing travel documents on the basis of birth certificates and identity cards. It has an important role to play to prevent travel documents being issued on the basis of forged documents. This sometimes happens, making it possible for children under the age of 18 to migrate for work. The Department is also responsible for detaining and removing from Sri Lanka undesirable persons who are not citizens of Sri Lanka.

27. The Ministry of Labour and Labour Relations also has a role to play in migration from Sri Lanka. It has officers posted in labour sections (labour welfare units) in Sri Lankan diplomatic missions in destination countries, along with SLBFE officers, to manage matters relating to migrant workers overseas.

28. The Human Rights Commission of Sri Lanka was established by Act No. 21 of 1996. The Act provides that the Commissioners shall be appointed by the President, on the recommendation of the Constitutional Council. The Commission has been accredited with B status, not fully in compliance with the Paris Principles relating to the status of national institutions: there are plans to make it compliant. It has undertaken work in relation to the human rights of migrants, notably concerning migrants detained in Sri Lanka and Sri Lankans migrating abroad for work, and it established a new focal point on migrant issues in 2012. The Special Rapporteur urges the Commission to continue to expand its work on the human rights of migrants. He also urges the Government to fully take into account the Commission's recommendations and to consult the commission in its work on migrants.

29. The National Advisory Committee on Labour Migration was established in 2010 with the objective of dealing with migration issues in a systematic manner. It is chaired by the Minister of Foreign Employment Promotion and Welfare, and comprises policy makers, scholars and practitioners, including two non-governmental organizations and a trade union appointed by the Government. It meets twice a month. In addition to the Advisory Committee, an interministerial committee was set up with all the ministries and government departments concerned in order to ensure coordination amongst them. The Special Rapporteur urges the Government to enhance its collaboration with a plurality of civil society organizations, rather than simply selecting two of them to participate in the Advisory Committee.

30. The Ministry of Foreign Employment Promotion and Welfare developed the National Labour Migration Policy of Sri Lanka in 2008, with technical assistance from ILO. Its implementation is monitored by the National Advisory Committee on Labour Migration. The Policy is aimed at developing a long-term vision for the role of labour migration in the economy; enhancing its benefits for the economy, society, migrants and their families and minimizing its negative impacts; and protecting the human and labour rights of migrants. It highlights the importance of regulating the recruitment industry in order to enhance its governance and the protection and empowerment of migrants.

31. The Special Rapporteur welcomes positive developments, such as the 2008 National Labour Migration Policy, the 2013 Code of Ethical Conduct for Licensed Foreign Employment Agencies and the 2014 Operational Manual for Labour Sections of Sri Lankan Diplomatic Missions in Destination Countries. However, he notes the need to fully implement those initiatives, involving all relevant stakeholders, including civil society organizations.

32. Other relevant policies include the Migration Health Policy, the National Strategy on Technical and Vocational Education for Vulnerable People in Sri Lanka, the National Human Resources and Employment Policy (2012), the National Decent Work Policy and the Development Framework (2006–2016) and the National Action Plan for the Promotion and Protection of Human Rights 2011–2016, which includes a section on the rights of migrant workers.

IV. Recruitment process

A. Introduction

33. The recruitment of Sri Lankans wishing to migrate for work takes place through private recruitment agencies (62 per cent), the government recruitment agency (Sri Lanka Foreign Employment Agency) (1.5 per cent), or informal networks or personal contacts (36 per cent). The majority of potential migrants rely on informal networks for information on job placements. The risks involved include bogus recruitment agencies and moneylenders who give loans to migrants at higher interest rates.[5]

34. When a licensed agency receives a job order from a company abroad, authenticated by the Sri Lankan mission in that country, it is approved by SLBFE in order to be advertised. SLBFE can reject the job order if the terms and conditions of employment are not satisfactory, if the workers are exposed to serious risks or if the employment is not regulated by the law of the host country. However, the last point does not apply to domestic workers, whose work in many countries is not covered by labour laws. When the agency

[5] See *Migration Profile: Sri Lanka*.

selects a domestic, low- and semi-skilled worker, that person is referred for pre-departure training. The contract is explained in the worker's language, and signed at an SLBFE office in the presence of an SLBFE officer and the agent. The registration fee is paid, and final approval is received from SLBFE. For persons migrating on their own, the process includes authentication of documents by the Sri Lankan mission in the destination country, pre-departure training, documentation and screening, delivery of visas and contracts, and payment of the registration fee. While those are good initiatives aimed at preventing the exploitation of Sri Lankan workers, the Special Rapporteur heard numerous allegations of corrupt officials bypassing those procedures, as well as of economic incentives being offered in order to lure people into accepting false promises. He also heard reports that the contract is not always translated into a language that the migrant understands. He urges the Sri Lankan authorities to ensure that is not the case, and that migrants are given a copy of the contract in their own language and receive information on how to complain if the contract is not respected.

35. Migrants often suffer abuse and exploitation in Sri Lanka during the recruitment process. Some lack information about their jobs and salaries before they leave, others report having signed a contract in Sri Lanka which was replaced by a different contract upon arrival in the destination State, with a lower salary and a different job description. As migrants often cannot change jobs without the agreement of their employer, they become highly vulnerable to abuse and less likely to report violations. In many cases, this will amount to trafficking as defined in the Palermo Protocol, since migrants are recruited by means of deception to achieve the consent of a person who has control over another person for the purpose of labour exploitation and forced labour. In this respect, the Special Rapporteur welcomes the anti-trafficking task force chaired by the Ministry of Justice and urges the authorities to prosecute and punish cases of trafficking effectively, including cases of trafficking for labour exploitation and forced labour.

B. Role and regulation of recruitment agencies and sub-agents/brokers

36. Many of the problems migrants face in the destination country relate to the recruitment process in Sri Lanka. Recruitment agencies are involved in many steps of the recruitment process, such as the signing of contracts, pre-departure training, grievance handling, conciliation and repatriation.[6] Around 60 per cent of licensed recruitment agencies are located in the Colombo district. This leads to disparities between the regions and could be one reason why so many prospective migrants rely on informal networks when looking for jobs abroad. Many also find the recruitment process cumbersome and time-consuming. Better regulation of recruitment agencies in Sri Lanka would be an important tool in combating the exploitation of migrants in destination States.

37. As noted in the National Labour Migration Policy, malpractices by private recruitment agencies and gaps in the regulatory framework for sub-agents lead to exploitative and abusive situations for migrant workers. The lack of a proper monitoring mechanism for licensed agencies is also noted in the Policy. The Special Rapporteur heard many allegations in that respect from returned migrants and family members of migrants. Agents and sub-agents deceive prospective migrants about the nature and conditions of work they will perform, including wages. The role of private recruitment agencies and sub-agents needs to be better regulated and monitored. The Special Rapporteur therefore welcomes the rating system for licensed recruitment agencies introduced by SLBFE in 2009 in order to identify and promote the better agencies and attempt to minimize the

[6] See ILO, *Recruitment Practices of Employment Agencies Recruiting Migrant Workers*.

negative impact of exploitative agencies. A system of awarding a maximum of five stars was initiated in 2013. He also notes that licences need to be renewed every year and that the criteria for renewal are based on the number of complaints against the agency. Additionally, the Ministry of Foreign Employment Promotion and Welfare has introduced a blacklisting system for recruitment agencies.

38. The Special Rapporteur was informed that when a complaint is lodged against a recruitment agency, a mobile phone text message is sent to the licensed agent, who is required to reply within 48 hours. If no reply is received, or the agency cannot prove it has not done anything wrong, the licence will be suspended and an inquiry will be initiated. The Special Rapporteur welcomes information from the Government that it is attempting to introduce an annual training programme for agents, which they will need to undertake when they come for the annual renewal of their licence. The Special Rapporteur hopes those initiatives will contribute to better recruitment agencies and fewer human rights violations.

39. The Association of Licensed Foreign Employment Agencies (ALFEA) was established under the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985. Its objective is to ensure and enforce best ethical practices for the foreign employment trade by strict disciplinary control of all stakeholders. Only about 300 of the 1,000 estimated licensed recruitment agents in Sri Lanka are members of ALFEA, owing to a clause in the 2009 amendment to the Act which changed the mandatory requirement for all licensed recruitment agents to join the Association. The draft Employment Migration Authority Act provides that all licensed agents must become members of a new association which will replace ALFEA, the National Chamber of Licensed Foreign Employment Agencies. The Chamber will inter alia ensure the strict observance by its members of the Code of Ethical Conduct for Licensed Foreign Employment Agencies.

40. Brokers, or sub-agents, who are not licensed or accountable to the Sri Lankan authorities often engage in irregular recruitment practices. In 2013, the Government made an attempt to regulate them by requesting them to register with SLBFE. Over 5,000 sub-agents registered. The Special Rapporteur notes the need to ensure stricter regulation of brokers/sub-agents. The draft Employment Migration Authority Act allows for the establishment of branches of the recruitment agencies, and it is believed that that will reduce the use of sub-agents.

C. Access to an effective remedy

41. The Special Rapporteur welcomes the work of SLBFE on conciliation and dispute settlement, including the electronic registration of complaints, which are accessible in the diplomatic missions and SLBFE regional offices. He was informed that all of the more than 3,500 pre-departure complaints from 2013 had been settled; being cheated of money was the most frequent violation reported. The Special Rapporteur is concerned, however, about reports of the ineffective handling of complaints received from migrants, inter alia due to inadequate staffing at SLBFE. Persons in rural areas, in particular, find it hard to follow up on their complaints. While in the past it was necessary to travel to Colombo to submit a complaint, it is now possible to submit complaints in district centres. However, the Special Rapporteur heard many complaints that the officers in the SLBFE Conciliation Division were not equipped with the necessary skills in complaint management, that it was difficult to complain or attend conciliation procedures in the regional offices, and that it was difficult for many to travel to Colombo.

42. Some migrants reported that they were not taken seriously by SLBFE, particularly poor and less articulate migrants. Those who were assisted by non-governmental organizations reported having more success in having their complaints registered. The

Special Rapporteur is also concerned about reports that persons who do not register with SLBFE when they migrate feel they are denied any assistance from the Bureau.

43. The Special Rapporteur was informed that returned migrants are often discouraged from complaining, either by husbands, family members or by other returnees whose complaints were fruitless. Some are forced by employers to sign documents in the destination State, most often in a foreign language, stating that they were well treated, in order to be allowed to return to Sri Lanka, and therefore SLBFE refuses to accept their complaints. The Special Rapporteur also heard reports of an insufficient time limit for returned migrants to obtain medical reports to claim insurance for accidents, and of many limitations in terms of benefits, including very low compensation for serious injuries as a result of ill-treatment by employers. The migrants are only insured for accidents and death, and the Special Rapporteur notes the need to expand the insurance coverage for migrant workers to global coverage, including proper medical insurance and adequate compensation for accidents. He also notes the need to make the SLBFE Welfare Fund more transparent, sharing information on the amount of money available in the Fund, and how it is spent.

D. Recruitment fees

44. The Sri Lanka Bureau of Foreign Employment Act, as amended in 2009, provides that no fee shall be charged by agencies other than an amount of Rs 3,000 to Rs 10,000, depending on the salary of the migrant worker. However, many migrants pay much higher fees to agents than those stipulated in the Act. Thirty per cent of the fee goes to the Workers Welfare Fund, which provides insurance for the workers in case of death, disability and illness, while 70 per cent goes to the agents as payment for having found the job.

45. Agents and sub-agents/brokers frequently overcharge prospective migrants, causing them to incur significant debt. Some prospective migrants rely on informal channels because of the high fees charged by private recruitment agencies. Many mortgage their lands to cover migration costs, take out loans or pawn jewellery,[7] owing to the difficulty many face in obtaining a bank loan to pay recruitment fees.

46. Pre-departure loans are provided to cover recruitment fees, except for domestic workers, who receive financial incentives to migrate.

47. The Special Rapporteur encourages Sri Lanka to ban recruitment fees for migrants, in accordance with ILO Convention No. 181, as the recruitment-related costs should be covered by the prospective employer.

E. Pre-departure training and information

48. Pre-departure training and information are provided to prospective migrants who are low- or semi-skilled and who migrate through official channels. The Special Rapporteur welcomes the provision of training, which can be an important tool to empower migrants and prevent abuse. However, some migrants note that the training is insufficient. For instance, training for domestic workers focuses on cooking and cleaning, with little language training and insufficient information on what to expect in the destination State, on their rights and on how to address violations of those rights. The Special Rapporteur also heard reports that some migrants do not even undergo the required training, as sometimes bribes are paid to get the training certificate. He urges the Sri Lankan authorities to prevent that from happening. Training and information sessions should be enhanced in order to

[7] *Migration Profile: Sri Lanka*

ensure that migration decisions are well informed, and that migrants have the necessary information on working conditions in the destination country, have the necessary skills, know their rights and how to seek help or lodge a complaint, and have the language skills to do so. In that respect, the Special Rapporteur welcomes the 24/7 hotline and the safe labour migration guide.

49. The Special Rapporteur visited the new migrant resource centre in Tangalle, which focuses on skills development and provides intensive English courses. This is the first such purpose-built centre in Sri Lanka; several more are to be developed in other regions. The Special Rapporteur hopes this will lead to better training and enhanced levels of skills for prospective migrants.

F. Consular assistance

50. Many Sri Lankan migrants report being deprived of the right to leave their place of work, non-payment of salaries, or having their passports confiscated. Other common violations reported are harassment, violence, threats, inadequate living conditions and difficult access to health care. Effective consular assistance is crucial to those migrants.

51. In Sri Lankan diplomatic missions in destination States, Ministry of External Affairs officials take care of consular issues, such as the issuing of passports, while SLBFE and Ministry of Labour officials deal with the welfare of Sri Lankan workers. The Special Rapporteur welcomes the appointment of welfare officers to serve in Sri Lankan missions abroad. However, although Sri Lankan diplomatic missions, especially those in the Middle East, are actively involved in the welfare of Sri Lankan migrant workers, there are still important gaps to be addressed. The Special Rapporteur met with returned migrants who had been detained for several months, with no visits from consular authorities. He has received numerous complaints about the lack of support from Sri Lankan diplomatic missions and considers that welfare services and consular assistance provided to Sri Lankan migrants in the destination State should be strengthened, particularly in countries with large numbers of Sri Lankan workers, by ensuring the presence of an adequate number of well-trained officers in the labour welfare sections. The Special Rapporteur heard complaints from some agents that the staff in the diplomatic missions do not handle complaints and welfare issues as they should, but rather ask the agent to solve problems instead of dealing with them themselves. Diplomatic missions need to enhance their role in the protection of migrant workers, including in cases of abuse, contract substitution, withholding of passports and wages, or repatriation. Additionally, the missions should have female officers to deal with cases of sexual abuse; provide a local 24/7 hotline free of charge; establish a roster of competent local lawyers; and conduct frequent visits to migrant detention centres.

52. The Special Rapporteur welcomes information received that the Sri Lankan authorities provide migrants with a SIM card so they can make phone calls. However, as mobile phones are frequently confiscated by employers, this is of no use for many migrants.

53. The second edition of the *Operational Manual for Labour Sections of Sri Lankan Diplomatic Missions in Labour Receiving Countries*, published in 2014, elaborated with assistance from ILO, provides guidance on, inter alia, handling complaints from migrant workers, repatriation of workers and ensuring a safe recruitment process. The Special Rapporteur encourages its full implementation, which would go a long way to assist Sri Lankan migrants in need.

G. Return and reintegration

54. The Special Rapporteur welcomes the increased focus on the effective reintegration of returned migrants, in accordance with the National Labour Migration Policy. Distressed or sick returnees can stay at the Sahana Piyasa welfare centre close to the Colombo and Mattala airports before they return home and the Special Rapporteur received information about reintegration programmes, including self-generating income projects. However, he notes that some returnees report that there are insufficient reintegration services, most importantly for those who may have experienced abuse abroad. The National Labour Migration Policy provides that the State shall ensure that the return and reintegration process takes place with full protection of rights and freedoms.

55. Some migrants return with little or no savings, or even indebted, unsuccessful in their migration project. Account must be taken of the economic, social and psychological dimensions of reintegration, especially for those who feel that their migration was a failure. Many have not acquired any skills, or have acquired non-marketable skills, despite having worked abroad for years, even decades. As their skills are not recognized in Sri Lanka, this often leads to re-migration. Most Sri Lankan migrants go overseas initially for a two-year contract period, but the Special Rapporteur met with returned migrants who had been away for as long as 30 years, with little to show for it in terms of savings, improved housing, skills, etc.

56. The Special Rapporteur was informed by the Government that 300 dead bodies come back to Sri Lanka every year. He heard many reports that migrants who die abroad are sometimes returned mutilated, some of them with missing organs. No autopsy is performed in Sri Lanka and the family is often not allowed to see the body. He urges the Sri Lankan authorities to systematically undertake independent autopsies and inform the families of the results.

H. Relationship with destination States

57. Although Sri Lanka and other countries of origin have a role in preventing abuse of their own nationals who migrate for work, the destination States are responsible for human rights violations committed against migrants on their territory. The Special Rapporteur heard many reports of abuses in destination States, including horrible stories of ill-treatment, such as migrants being set on fire and killed by their employer, or being forced to drink chemicals. Low-skilled migrants in particular are subject to high levels of human rights violations in many countries, including harassment, abuse and labour rights violations. Returned migrants also report that the Sri Lankan authorities are often not able to protect them in the destination States. The Special Rapporteur therefore notes the need to enhance cooperation with destination States to ensure that the rights of Sri Lankans are respected during the whole migration process.

58. Sri Lanka has entered into memorandums of understanding with Bahrain, Italy, Jordan, Libya and the United Arab Emirates, and a bilateral agreement with Qatar, and has recently signed an agreement with Saudi Arabia concerning domestic workers. Sri Lanka has also signed a government to government agreement via the Employment Permit Scheme with the Republic of Korea. The Special Rapporteur was informed that, although the memorandums of understanding/agreements provide for annual meetings, such meetings do not take place regularly with all the destination States.

59. The bilateral agreement with Saudi Arabia on domestic workers is a positive development. It requires both parties to adopt a standard employment contract, to use only licensed recruitment companies which follow ethical recruitment practices and use

regulated recruitment costs, and to allow the right to recourse. It provides that Saudi Arabia shall facilitate the opening of a bank account by the employer for the deposit of the domestic worker's salary and facilitate the issuance of exit visas. The standard employment contract states the monthly salary, and that the employer shall deposit the salary to the said account every month. It also provides that domestic workers shall have at least eight hours rest per day and one rest day per week, suitable and sanitary living quarters, adequate food or a monetary allowance for food, paid sick leave and medical expenses, and no deductions from the salary. Furthermore, the employer shall pay for the residence permit and exit visa, the passport and work permit shall remain in the worker's possession, and workers shall have free communication with their family and Sri Lankan diplomatic missions.

60. The Special Rapporteur urges Sri Lanka to pursue the conclusion of similar agreements with other destination States, and ensure their strict implementation. The agreements should include a uniform model contract for all workers, including domestic workers, which should ensure respect for and protection of their human rights. Labour contracts based on such a model should specify the job description, wages and labour conditions. The Special Rapporteur notes the importance of bilateral agreements and memorandums of understanding being formulated in a transparent manner with all key stakeholders involved, and of ensuring that they are accessible to the public.

61. In the meantime, the Sri Lankan authorities should cooperate closely with the destination States, ensuring that the contract which is signed in Sri Lanka, in the SLBFE offices, is shared with the destination State for quick electronic registration, in order to prevent contract substitution.

V. Women migrants and domestic workers

62. Sri Lankan women frequently suffer from a lack of equal access to employment opportunities owing to discriminatory social practices. While migration has opened up employment opportunities for many women, the majority migrate to work as domestic workers, although their proportion is decreasing. Domestic workers are particularly vulnerable to abuse and exploitation, owing to their worksite being a private household and to the informal nature of the work. The majority of women domestic workers have faced harassment in the workplace. Other complaints include absence of days off, absence of rest and sleep, non-payment of wages, verbal abuse, restricted communication and food deprivation.[5] Because of the financial incentives provided, women are sometimes sent abroad by their husbands or family members, who expect the women to send their salaries back home. Contracts for domestic workers cannot be terminated early, as the employer pays all the migration-related costs.

63. Domestic work is excluded from most of the labour laws in many countries, including Sri Lanka. The Special Rapporteur believes Sri Lanka would find it easier to negotiate the legal protection of Sri Lankan domestic workers abroad if it could show that that was not the case in Sri Lanka. Such protection should include a law on domestic workers and ratification of ILO Convention No. 189 (2011) on decent work for domestic workers.

64. Specific age limits are applied to women who wish to migrate from Sri Lanka as domestic workers, depending on the destination State. For Saudi Arabia, the minimum age is 25, for other countries in the Middle East 23 and for the rest of the world 21 years.

[5] See Caritas Sri Lanka, *Migration of Sri Lankan Women: Analysis of Causes & Post-Arrival Assistance*.

Additionally, a circular of January 2014 provides for a "family background report" to be prepared by the Ministry of Foreign Employment Protection and Welfare for women migrants seeking employment in the domestic domain. The report is prepared by ministry officials deployed at the divisional secretariat level. Women with children under 5 will not be "recommended" for migration, while mothers with children above 5 will only be recommended for migration if alternative care arrangements made are satisfactory for ensuring their protection. The Special Rapporteur was informed during his visit that so far in 2014, 756 women had not been recommended for migration.

65. The Special Rapporteur regrets the discrimination faced by Sri Lankan women in relation to the right to migrate. The fact that they have small children, or that many domestic workers suffer abuse and exploitation, including the tragic execution of Rizana Nafeek, cannot be used as a reason to deny them the right to leave their country as provided for in the International Covenant on Civil and Political Rights, which has been ratified by Sri Lanka. What the Government refers to as "traditional Sri Lankan values" do not trump human rights obligations that it has committed itself to upholding. Women's rights organizations in Sri Lanka are protesting against the above-mentioned circular, which reportedly is leading to irregular migration.

66. The Government informed the Special Rapporteur that there was a demand from society to regulate the migration of women with children in order to ensure the protection of those children. However, that was not reflected in any observation by members of civil society the Special Rapporteur met with, who were all against the circular. The Special Rapporteur has also been informed that, owing to access to forged documents and corrupt officials, the age limits and other recommendations in the circular are not properly implemented anyway. While the intentions of the Government of Sri Lanka that lie behind those restrictions seem to be good, aiming to protect those women and their children, restrictions on women's right to leave their country are not the right way to achieve such objectives. In fact, the Special Rapporteur was told that many women migrate in order to escape from family issues, including domestic violence. Sri Lankan men are also frequently victims of abuse and exploitation in destination States, and the Special Rapporteur recommends that Sri Lanka come up with a holistic approach to deal with exploitation of Sri Lankan migrants abroad, both men and women. He also urges the Government to focus on other means, such as creating more income-generating opportunities for women in Sri Lanka, including in rural areas, diversifying child-care support measures and enhancing gender equality and men's participation in their children's upbringing.

67. The draft Employment Migration Authority Act provides in article 74 a gender-neutral requirement for Sri Lankans migrating for work to inform the Divisional Secretary about any child under 6 years that they will be leaving behind in Sri Lanka, and to register a guardian for such a child. The Special Rapporteur hopes that will end the discriminatory measures directed at women only, and urges the Sri Lankan authorities to consider fathers as per guardians of their own children.

68. The Special Rapporteur also urges the Sri Lankan authorities to ensure better protection of female domestic workers abroad. If properly implemented, the bilateral agreement with Saudi Arabia referred to above, which includes a standard contract that guarantees some rights for domestic workers, is a positive development in that respect. Similar agreements with other destination States should be negotiated and effectively implemented. Pre-departure training for domestic workers became compulsory in 1996, and a training certificate is mandatory in order to register with SLBFE. However, as domestic workers continue to be abused and exploited in destination States, the Special Rapporteur notes the need for enhanced training, particularly in order to empower women to leave such exploitative situations.

VI. Cross-cutting concerns

A. Families and children left behind

69. The Rata Viruwo programme, implemented by SLBFE, is aimed at ensuring sustainable development practices in favour of migrant workers and their family members. There is a housing programme whereby loans are given to construct houses, and there are also scholarships provided to children of migrant workers, as well as singing, dancing and arts competitions. However, while some studies show that migration of parents has a positive impact on children's education due to the increased ability to pay education costs, migration can also have negative consequences for those left behind, particularly children. The Special Rapporteur heard reports of how the absence of their parents can lead to disruption of children's education, neglect, abuse and exploitation, including sexual abuse of girls. Sometimes the oldest daughter in the family will be tasked with responsibility for the household, and will stop going to school. Some children also face alcohol abuse, child labour and early marriage. The Special Rapporteur urges the Sri Lankan authorities to enhance the attention given to the protection of families and children left behind, particularly in order to prevent child abuse and to ensure children's access to education. Denying mothers the right to migrate is not the solution.

B. Irregular migration from Sri Lanka

70. Attempting to leave Sri Lanka irregularly is a criminal offence, and Sri Lankans who try to migrate irregularly by boat, mainly to Australia, are often intercepted by the Sri Lankan authorities. Sri Lanka has entered into a readmission agreement with Australia, and the navy and coastguards are working to deter irregular migration by boat. Irregular migration from Sri Lanka is punishable by no less than one year of imprisonment, according to the Immigrants and Emigrants Act. The Sri Lankan authorities assured the Special Rapporteur that no penalty is imposed on those persons, as they are seen as victims of smugglers, and the only criminal action taken is against the smugglers. However, that contradicts reports provided to the Special Rapporteur, as well as statements by Sri Lankan officials to the media, such as that those returned would be charged with leaving the country illegally and those found guilty would face "rigorous imprisonment".[9] The Special Rapporteur strongly urges the Government to decriminalize irregular migration, as it should only be considered an administrative offence, and persons attempting to migrate irregularly should not be imprisoned.

C. Migration to Sri Lanka

71. While the Special Rapporteur's visit was mainly focused on migration from Sri Lanka, he also looked into migration to Sri Lanka and, particularly, the detention of migrants in an irregular situation. He visited Mirihana detention centre for migrants, with 68 detainees (58 men, 5 women, 5 children) and Boosa prison, with 11 migrant detainees, who were separated from the other detainees, held under anti-terrorism legislation. Ninety per cent of the migrant detainees were awaiting deportation, while the rest were waiting for their immigration rule violations to be resolved. The Special Rapporteur deeply regrets the policy of mandatory administrative detention of irregular migrants, with no individual assessment, no maximum time limit, no alternatives to detention, and the detention of

[9] Available from www.bbc.com/news/world-asia-28193492.

families with children. The Special Rapporteur was informed that irregular migrants are kept in detention until they leave the country, and they have to come up with the money to buy aeroplane tickets themselves. In the Mirihana detention centre, he met five children who had stayed there with their families for as long as two years, with no access to education, in violation of the Convention on the Rights of the Child, including the principle of the best interests of the child. The detainees at Boosa prison were kept under maximum security restrictions, with no access to mobile phones or the Internet.

72. The Special Rapporteur also deeply regrets that the Constitution of Sri Lanka guarantees certain rights, including protection against discrimination and the right of peaceful assembly, freedom of association and freedom to form and join a trade union, to citizens only, in violation of key international human rights law guarantees. He also regrets that there is no law protecting migrants in Sri Lanka.

D. Cooperation with civil society organizations

73. The Special Rapporteur heard reports of a shrinking democratic space for civil society organizations in Sri Lanka. He regrets the lack of trust between the Government and civil society organizations and urges the Government to reach out to such organizations and fully include them in its migration-related work, including the development of the new Employment Migration Authority Act and the conclusion of new bilateral agreements with destination States. Civil society organizations expressed to the Special Rapporteur a wish to be included in strategic discussions with the Government, rather than only in those on technical cooperation. The Special Rapporteur also heard concerns that the creation of the Rata Viruwo Foundation might lead to the exclusion of civil society organizations in migration-related discussions.

VII. Conclusions and recommendations

74. **The Special Rapporteur welcomes the efforts undertaken by the Sri Lankan authorities to regulate labour migration and protect the rights of its citizens migrating abroad, but notes the need to fully implement a human rights approach in that respect.**

75. **While migration plays a key role in the economic development of Sri Lanka, many Sri Lankan migrants experience abuse and exploitation, which often begins during the recruitment process. The Special Rapporteur understands the importance of remittances to the Sri Lankan economy, but he insists that this should not trump the rights of migrants. It is therefore important to make sure attention is paid to the protection of migrants, not just the promotion of migration. More focus could be placed on creating jobs in Sri Lanka, rather than focusing mainly on promoting labour migration, thus training people to leave the country. The creation of income-generating opportunities in Sri Lanka, especially for women, youth and minorities, including in rural areas, would contribute to ensuring that migration is a choice, rather than a necessity. At the same time, Sri Lankans who wish to migrate have the right to do so; leaving any country including one's own is a human right. This right applies equally to men and women.**

76. **The Special Rapporteur notes that there are some good policies in place, which, if they are implemented effectively, could potentially prevent some of the abuse that migrants currently experience during the migration process. There is also a need for strong rights-based legislation and enforceable agreements with all destination States.**

A. Recommendations to the Government of Sri Lanka

77. **In light of the information received and the concerns expressed, the Special Rapporteur wishes to propose the following recommendations to the Government of Sri Lanka. He urges the Government to consider these recommendations seriously and to implement them in cooperation with all relevant stakeholders, including the United Nations country team and civil society organizations. Technical cooperation for the implementation of recommendations could be sought from ILO, which has indicated its willingness to provide assistance to implement the Special Rapporteur's recommendations.**

78. **The Special Rapporteur recommends that the Government:**

1. Normative and institutional framework for the protection of the human rights of migrants

(a) Ratify ILO Conventions No. 97 concerning Migration for Employment (Revised 1949), No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, No. 181 (1997) concerning Private Employment Agencies, and No. 189 (2011) concerning decent work for domestic workers;

(b) Ensure that Sri Lankan legislation, including the draft Employment Migration Authority Act, is fully in line with international human rights standards, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(c) Fully implement the concluding observations adopted in 2009 by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and make the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals; and accept the jurisdiction of all treaty bodies to hear individual complaints about the implementation of the human rights treaties to which Sri Lanka is a party;

(d) Promote bilateral, regional and international cooperation in the field of migration with destination States; seize the opportunity as the current Chair of the Colombo Process to enhance cooperation among countries of origin; and continue working with the Abu Dhabi Dialogue and its member States, pushing for a binding, unified work contract based on international human rights and labour standards;

(e) Ensure that the new Employment Migration Authority Act provides a proper delineation of the Authority's functions, that it ensures a balanced representation on the Board of Management of the Sri Lanka Bureau of Foreign Employment, including of workers, that it does not impose undue restrictions on the right to leave Sri Lanka and that it includes strong human rights protection for all migrants; and ensure interministerial coordination for the implementation of the Act.

(f) Strengthen the independence of the Sri Lankan Human Rights Commission, including in relation to the appointment process for its commissioners, provide it with adequate resources, systematically consult it on all migration issues with human rights implications, and implement its recommendations, inter alia in relation to labour migration from Sri Lanka and the detention of migrants in Sri Lanka;

(g) Involve all relevant stakeholders in all policy and service delivery issues concerning migrants, including trade unions and civil society organizations working for the human rights of migrants or constituted by migrants and returnees;

2. The recruitment process

(h) Undertake all the necessary steps to prevent the exploitation and abuse of migrants and to protect their rights during the recruitment stage, while they are in service in the destination country and upon their return to Sri Lanka;

(i) Ensure full implementation of, and make legally binding, the Code of Ethical Conduct for Licensed Foreign Employment Agencies, involving all relevant stakeholders;

(j) Enhance the regulation and monitoring of the recruitment industry, by: putting in place a comprehensive recruitment policy with high standards; ensuring that recruitment agencies improve the services they offer and holding them accountable for the non-execution of their duties; and regulating irregular sub-agents/brokers and sanctioning unlicensed agencies;

(k) Make licensed recruitment agencies more easily accessible in order to reduce informal networks and reliance on brokers, including in rural districts;

(l) Ensure the full transparency of the Workers Welfare Fund of the Sri Lanka Bureau of Foreign Employment (SLBFE), including with regard to the amount of money available and how it is spent;

(m) Abolish the payment of a motivational fee prior to leaving Sri Lanka, which may lead to debt bondage, making it difficult or impossible for a Sri Lankan worker to leave an abusive employer;

(n) Provide SLBFE with more resources in order to enable it to deal more effectively with complaints made by migrants, and enhance the legal assistance opportunities to help migrants pursue claims; ensure that returned migrants obtain appropriate redress, including financial compensation; prosecute perpetrators of violations under the Penal Code; and create alternative livelihood opportunities or skills development for migrants upon their return to Sri Lanka;

(o) Abolish recruitment fees for migrants and, in the meantime, reduce costs for migrants, including illegally high fees charged by some recruitment agencies and sub-agents/brokers;

(p) Enhance and improve pre-departure training and information in order to promote informed decision-making and enhance the skill levels of prospective migrants, including language skills and general education levels. Migrants should be empowered to know their rights and how to claim them, including by providing them with information on the local culture and lifestyle in the destination country and on important legislation there, which may be very different from those in Sri Lanka;

(q) Ensure that migrants are properly informed about the migration process and, in particular, ensure that employment contracts signed by migrants are always written in a language that they can read and understand;

(r) Refrain from sending migrants from Sri Lanka to countries where the legal and institutional framework necessary to guarantee the protection of their rights is not in place. This must include domestic workers, who are often excluded from labour laws;

(s) Make the protection of migrants a priority concern for Sri Lankan diplomatic missions in destination States; and strengthen the welfare services and consular assistance provided to Sri Lankan migrants in destination States, ensuring that diplomatic missions are adequately staffed and that staff are properly trained to deal with all issues faced by migrant workers. Diplomatic missions in destination States should play a more proactive role in protecting their own nationals against abuse and be properly equipped to provide assistance to Sri Lankans in need. Diplomatic missions should have female officers to deal with cases of sexual abuse, provide a local 24/7 hotline free of charge, establish a roster of competent local lawyers able to help Sri Lankan migrants with legal issues, and conduct frequent visits to migrant detention centres;

(t) Facilitate the repatriation of migrants in need, including those who have escaped from abusive employers or have ended up in an irregular situation, in detention or elsewhere;

(u) Establish a sustainable reintegration policy and enhance the services provided for the reintegration of returned migrants, including psychosocial services and livelihood opportunities, particularly for those who have experienced abuse during their migration process;

(v) Conduct independent autopsies on the bodies of all Sri Lankans who die abroad, and give family members quick access to the results;

(w) Enhance cooperation with destination States to prevent violations such as contract substitution, the confiscation of passports, the non-payment of wages, and abuse and exploitation;

(x) Negotiate with all destination States binding bilateral agreements providing for the protection of the human rights of migrants, and work together with destination States to ensure that illegal recruitment fees are not charged and that employment contracts signed in Sri Lanka are not replaced upon arrival by less favourable ones. That could be achieved by adopting a uniform model contract for all workers, including domestic workers, which is already being discussed in the Colombo Process. Such a model contract, to be included in bilateral agreements with all destination States, should ensure respect for and the protection of the human rights of migrants, including labour rights, with terms and conditions clearly stated. Labour contracts based on such a model should set out the job description, the agreed salary, working and living conditions, and effective recourse and remedies;

(y) Monitor the enforcement of bilateral agreements effectively, and ensure that all bilateral agreements and memorandums of understanding signed with destination States are made public, ensuring transparency and the monitoring of their implementation;

3. Women migrants and domestic workers

(z) Establish a standard contract for domestic workers, to be included in all bilateral agreements, which should include provisions on, inter alia, wages, working hours, working conditions, overtime pay, annual leave and effective remedies, as set out in ILO Convention No. 189 (2011) concerning decent work for domestic workers;

(aa) Abolish the financial incentives given to prospective domestic workers, which may be used to coerce them to migrate;

(bb) Establish a reference wage for domestic workers, reflective of skills and experience, which should apply to all workers in all destination States and be included in bilateral agreements;

(cc) Withdraw the Ministry of Foreign Employment Promotion and Welfare circular issued in January 2014, to respect women's freedom of movement;

(dd) Enhance pre-departure training for domestic workers, particularly focusing on language skills and information on their rights and how to claim those rights; continue and expand training programmes for women wishing to migrate to work as service providers, with the aim of reducing the number of Sri Lankan women migrating as domestic workers;

4. Cross-cutting concerns

(ee) Conduct a thorough study of the root causes of migration and its social consequences, including for families and children left behind, and enhance efforts to protect the children of migrants from abuse and exploitation, ensure their access to education and prevent early marriages;

(ff) Decriminalize irregular departures from Sri Lanka, as irregular migration should only be seen as an administrative offence; and refrain from detaining returned Sri Lankans who have migrated irregularly;

(gg) Detain migrants in an irregular situation in Sri Lanka only as a measure of last resort, for as short a period as possible, and systematically apply alternatives to detention, particularly for families and children, who should never be detained; in that respect, consider the recommendations made by the Special Rapporteur in his report on the detention of migrants in an irregular situation and alternatives to detention (A/HRC/20/24);

(hh) Ensure that all persons, regardless of citizenship or migration status, enjoy the rights provided for in the Constitution of Sri Lanka without any discrimination, in accordance with international human rights law;

(ii) Enhance cooperation with civil society organizations working on migration-related issues, and include them in all relevant discussions.

B. Recommendations to destination States

79. The Special Rapporteur recommends that destination States:

(a) Regulate and monitor all recruitment agencies operating in their territory in order to guarantee ethical recruitment in compliance with international human rights and labour standards, and impose sanctions on those who violate such regulations;

(b) Ensure that contracts are respected, and undertake all the necessary efforts to prevent contract substitution, in cooperation with the Sri Lankan authorities;

(c) Investigate and prosecute effectively all cases of exploitation and abuse of migrants;

(d) Ban recruitment fees for migrants and the confiscation of their passports, and sanction violations effectively;

(e) Abolish sponsorship systems which tie migrants to their employer, thus rendering them vulnerable to abuse and exploitation;

(f) Detain migrants in an irregular situation only as a measure of last resort, for as short a period as possible, systematically apply alternatives to detention, refrain

from detaining children and families, and give particular attention to supporting migrants who have escaped from abusive employers;

(g) Ensure the availability of complaint and redress mechanisms, legal aid and interpreters for migrants;

(h) Ratify the core United Nations human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the relevant ILO conventions.